

ARKANSAS SUPREME COURT

No. CR 05-706

NOT DESIGNATED FOR PUBLICATION

ROGER DALE CAMPBELL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 23, 2006

PRO SE APPEAL FROM THE CIRCUIT COURT
OF BOONE COUNTY, CR 2001-433, HON.
JOHNNY RAY PUTMAN, JUDGE

AFFIRMED

PER CURIAM

A judgment and commitment order entered on July 25, 2003, reflects that appellant Roger Dale Campbell appeared before the Boone County Circuit Court, entered pleas of guilty to two counts of arson, residential burglary, and domestic battering in the third degree, and was sentenced to an aggregate sentence of eight years' imprisonment in the Arkansas Department of Correction. An amended judgment and commitment order entered on September 15, 2003, indicates that appellant entered pleas of *nolo contendere* to the charges. He then filed in the trial court a *pro se* petition for writ of *habeas corpus* on October 9, 2003, and a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1 on March 17, 2004. The trial court denied the postconviction relief petition and dismissed the petition for writ of *habeas corpus* by order entered March 9, 2005. Appellant brings the present appeal from that decision

As an initial matter, the State asserts that appellant has failed to include his notice of appeal in his addendum and that his brief is therefore deficient. While we would agree, we do not provide appellant an opportunity to submit a complying brief, because it is clear from the record that appellant could not prevail. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324

Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*). It is clear from the record before us that we must affirm the denial of postconviction relief and dismissal of the petition for writ of *habeas corpus*.

At the time that appellant filed his petition for writ of *habeas corpus*, he was incarcerated in Jackson County. The State notes that appellant may now be in Hot Spring County. Regardless, he was not, and is not, incarcerated in Boone County. A circuit court does not have jurisdiction to release on a writ of *habeas corpus* a prisoner not in custody in that court's jurisdiction. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991)). The trial court correctly determined that it did not have jurisdiction to return the writ.

As for appellant's petition under Rule 37.1, the trial court correctly determined that it was also without jurisdiction to grant the relief requested. Arkansas Rule of Criminal Procedure 37.2(c) requires a petition for postconviction relief following a guilty plea to be filed within ninety days of the date of entry of judgment. Appellant's *pro se* petition was not filed with the circuit clerk until 184 days after entry of the amended judgment and commitment order. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on a petition for postconviction relief which is not properly filed. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (*per curiam*). Because appellant's petition was not timely filed, the trial court could not grant the relief requested. In view of the fact that appellant cannot prevail under either petition, we affirm the trial court's order denying postconviction relief and dismissing the petition for *habeas corpus* relief.

Affirmed.